

REMARKS

In the non-final Office Action, the Examiner rejects claims 1, 2, 4-11, 16-21, 23-30, and 34-38¹ under 35 U.S.C. § 103(a) as unpatentable over SRINIVASAN et al. (U.S. Patent Application Publication No. 2002/0042738) in view of MESSER (U.S. Patent No. 7,020,622), and further in view of MASON et al. (U.S. Patent Application Publication No. 2002/0161648); and rejects claims 3, 15, 22, 31, 32, and 39-46² under 35 U.S.C. § 103(a) as unpatentable over SRINIVASAN et al. in view of MESSER, further in view of MASON et al., and still further in view of ISHIKAWA (U.S. Patent Application Publication No. 2001/0037314). Applicants respectfully traverse these rejections.

By way of the present amendment, Applicants amend claims 1, 3-7, 15-17, 31, 34, 35, 44, and 45 to improve form. No new matter is added by way of the present amendment. Claims 1-11, 15-32, and 34-46 remain pending.

**Rejection under 35 U.S.C. § 103(a) based on
SRINIVASAN et al., MESSER, and MASON et al.**

Claims 1, 2, 4-11, 16-21, 23-30, and 34-38 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over SRINIVASAN et al. in view of MESSER, and further in view of MASON et al. Applicants respectfully traverse this rejection.

Independent claim 1 is directed to a method that is performed by one or more server devices. SRINIVASAN et al., MESSER, and MASON et al., whether taken alone or in combination, do not disclose or suggest one or more features of claim 1.

¹ On page 2 of the Office Action, the Examiner includes claim 33 in this rejection. However, this claim was previously canceled. Therefore, Applicants respectfully submit that the rejection of claim 33 is moot.

² On page 19 of the Office Action, the Examiner lists only claims 3, 15, 22, 31, 32, and 39-43 in this rejection. On page 21 of the Office Action, under this rejection, the Examiner appears to provide a specific ground of rejection for claim 44. On page 22 of the Office Action, the Examiner appears to provide specific grounds of rejection for claims 45 and 46 (even though these grounds of rejection are both labeled as "43"). Applicants assume the Examiner intended to include claims 44-46 in this rejection. If Applicants' assumption is incorrect, Applicants respectfully request that the Examiner issue a new non-final Office Action correctly stating the intended grounds of rejection.

For instance, SRINIVASAN et al., MESSER, and MASON et al. do not disclose or suggest identifying, by one or more processors of the one or more server devices, the set of non-malicious users visiting the web site from the group of users visiting the web site based at least in part on the collected information, as recited in claim 1. The Examiner relies on paragraph 0100 of SRINIVASAN et al. for allegedly disclosing identifying, by one or more processors of the one or more server devices, the set of non-malicious users visiting the web site from the group of users visiting the web site based on the collected information. Applicants respectfully submit that this paragraph of SRINIVASAN et al. does not disclose or suggest at least this feature of claim 1.

At paragraph 0100, SRINIVASAN et al. discloses:

In one embodiment, the population may include every potential customer that visits the website. Alternatively, the population may be clustered or segmented, and only visitors that meet a certain profile are considered to be within the population. For example, only visitors that have never bought from the Internet merchant may be sampled. As another example, visitors may be clustered into socioeconomic groups, and only certain groups are sampled when determining an optimal advertisement. In this case, the population may be segmented according to one or more variables, such as income, zip code, profession, previous buying history or the like. Alternatively, the entire population may be segmented, with separate experiments run on each segment determining an optimal advertisement for each segment. As another example, visitors may be identified for sampling based upon prior purchasing history or other accumulated data. Segments may be determined from these demographic variables and/or from prior purchase histories. To apply segmentation, each visitor is categorized as to population segment prior to being shown an advertisement.

This section of SRINIVASAN et al. discloses that "visitors may be clustered into socioeconomic groups, and only certain groups are sampled when determining an optimal advertisement." Applicants respectfully submit that such "cluster[ing] into socioeconomic groups," as disclosed by SRINIVASAN et al., does not disclose or suggest identifying a set of non-malicious users visiting the web site from the group of users visiting the web site. As such, Applicants respectfully submit that SRINIVASAN et al. does not disclose or suggest the above feature of claim 1.

Applicants respectfully submit that the disclosures of MESSER and MASON et al. do not remedy the deficiencies in the disclosure of SRINIVASAN et al. set forth above.

Further with respect to claim 1, SRINIVASAN et al., MESSER, and MASON et al. do not

disclose or suggest identifying, by one or more processors of the one or more server devices, a first proportion of a quantity of non-malicious users visiting the web site to a total quantity of users visiting the web site, as recited in claim 1. The Examiner appears to rely on paragraph 0114 of SRINIVASAN et al. for allegedly disclosing identifying, by one or more processors of the one or more server devices, a first proportion of a number of non-malicious users visiting the web site to a total number of users visiting the web site (Office Action, p. 3).³ Applicants respectfully submit that this paragraph of SRINIVASAN et al. does not disclose or suggest at least this feature of claim 1.

At paragraph 0114, SRINIVASAN et al. discloses:

Consider a specific example of an optimal advertisement calculated by the inventive system. In this example, the experiment is being run for a set of 5 ads for the first time. Therefore, at step 410, the system sets up for a uniform distribution of the advertisements. It is estimated in this example that the website receives 100,000 visitors a day. In this case, the five ads--Ad A, Ad B, Ad C, Ad D and Ad E are input into the system. The objective in this example is to maximize the click-through rate, and the minimum effectiveness threshold is 1%.

This section of SRINIVASAN et al. discloses that "it is estimated. . . that the website received 100,000 visitors a day." Applicants respectfully submit that a number of visitors to a website is clearly different from a proportion of a quantity of non-malicious visitors to a website to a total quantity of users visiting the web site. Furthermore, a number and a proportion of two quantities (*i.e.*, a quantity of non-malicious users visiting the web site, and a total quantity of users visiting the web site, as recited in claim 1) are two different concepts.

Applicants also note that the Examiner relies on paragraph 0110 of SRINIVASAN et al., which discloses visitors "clustered in socioeconomic groups," for allegedly corresponding to non-malicious users visiting the website, as recited in claim 1 (Office Action, p. 3). Without acquiescing

³ The Examiner cites to paragraph 0014 of SRINIVASAN et al., which discloses, "Current systems including data mining methodologies are retrospective, and there is a significant lag in analysis time. The dynamic nature of the Internet makes even recent information obsolete." Applicants believe that citing to paragraph 0014 was an inadvertent typographical error, and that the Examiner appears to intend to rely on paragraph 0114. Furthermore, Applicants respectfully submit that paragraph 0014 of SRINIVASAN et al. clearly does not disclose or suggest the above feature of claim 1.

in this interpretation, Applicants respectfully submit that neither the above section nor any other section of SRINIVASAN et al. discloses or suggests identifying a first proportion of a quantity of non-malicious users visiting a website (or, as the Examiner alleges, "visitors clustered in socioeconomic groups") to a total quantity of users (e.g., the alleged 100,000 users) visiting the web site. Thus, even under the Examiner's interpretation, the above section of SRINIVASAN et al. does not disclose or suggest identifying, by one or more processors of the one or more server devices, a first proportion of a quantity of non-malicious users visiting a website to a total quantity of users visiting the web site, as recited in claim 1.

The Examiner further alleges, regarding the above section of SRINIVASAN et al., "In this case, the five ads--Ad A, Ad B, Ad C, Ad D and Ad E are input into the system" (Office Action, p. 3). It is unclear how this allegation addresses any of the features of claim 1.

Applicants respectfully submit that the disclosures of the other cited references do not remedy the deficiencies in the disclosure of SRINIVASAN et al. set forth above.

Further with respect to claim 1, SRINIVASAN et al., MESSER, and MASON et al. do not disclose or suggest determining, by one or more processors of the one or more server devices, an occurrence of spamming on the web site, where the determining includes identifying a second proportion of a quantity of clicks on the advertising link by identified non-malicious users to a total quantity of clicks on the advertising link by the group of users, as also recited in claim 1.

The Examiner concedes that SRINIVASAN et al. does not disclose or suggest "an occurrence of spamming on the web site based" (Office Action, p. 4). However, the Examiner appears to rely on paragraph 0117 of SRINIVASAN et al.,⁴ col. 3, lines 9-13 of MESSER, and

⁴ The Examiner cites to paragraph 0017 of SRINIVASAN et al., which discloses, "U.S. Pat. Nos. 5,822,736 and 5,987,425 disclose a variable margin pricing system and method that generates retail prices based on customer price sensitivity in which products are grouped into pools from a first pool for the most price sensitive products to a last pool for the least price sensitive products. However, the price sensitivities are determined manually by the storekeeper based

paragraph 0029 of MASON et al. for allegedly disclosing identifying a second proportion of a number of clicks on the advertising link by identified non-malicious users to a total number of clicks on the advertising link by the group of users (Office Action, pp. 3-5). Applicants respectfully submit that these sections of the cited references do not disclose or suggest the above feature of claim 1.

At paragraph 0117, SRINIVASAN et al. discloses:

In this example, every ad met the minimum threshold of 0.001, and therefore none are dropped. Ad C is determined to be the most effective ad and may now be distributed to every visitor that visits the website.

This section of SRINIVASAN et al. discloses comparing effectiveness of multiple ads. In contrast, claim 1 recites identifying a second proportion of a quantity of clicks on an advertising link by identified non-malicious users to a total quantity of clicks on the (same) advertising link by the group of users. Therefore, this section of SRINIVASAN et al. fails to disclose or suggest at least this feature of claim 1.

At col. 3, lines 9-13, MESSER discloses:

The system further and optionally includes fraud detection processes which detect Javascript on the affiliate's page that automatically triggers and loops the web page linking codes, artificially creating multiple "clicks" on the promotion.

This section of MESSER discloses the detection of fraud through the detection of "Javascript on the affiliate's page that automatically triggers and loops the web page linking codes, artificially creating multiple 'clicks' on the promotion." The detection of JavaScript on a web page is different from identifying a second proportion of a quantity of clicks on the advertising link by identified non-malicious users to a total number of clicks on the advertising link by the group of users, as recited in claim 1. Therefore, this section of MESSER fails to disclose or suggest at least this feature of claim

on his subjective impressions and are not obtained in real-time." Applicants believe that citing to paragraph 0017 was an inadvertent typographical error, and that the Examiner appears to intend to rely on paragraph 0117. Furthermore, Applicants respectfully submit that paragraph 0017 of SRINIVASAN et al. clearly does not disclose or suggest the above feature of claim 1.

1.

At paragraph 0029, MASON et al. discloses:

With reference to the two columns on the left side of the drawing, a statistical analysis package monitors and reports the total amount of viewer traffic that an online newspaper website receives. The present invention provides the ability to monitor the success of particular advertising campaign in real time and facilitates the modification of an advertising campaign either automatically or with user intervention. For example, an advertising campaign can start with three different original ads which are reconfigured and then placed on a wide number of websites. By monitoring the number of click-throughs on each of the ads, a more successful derivative advertisement link, i.e., one which receives a greater number of click-throughs, can be substituted for the less successful banners. The computing devices which are used to run and monitor the methods of the present invention can be automatically programmed to substitute a more successful banner for a less successful banner according to one or more pre-determined criteria, e.g., if the number of click-throughs is different by a pre-determined percentage. For example, if the derivative advertisement links from one original ad are receiving 20% more click-throughs than the derivative advertisement links created from a second original ad, then some or all of the placements of the second original ad can be automatically replaced by the more successful ad. Alternatively, other criteria and parameters used in tailoring an advertising campaign can also be adjusted during the campaign automatically or using user intervention. For example, if it is found that a soup advertisement is receiving more click-throughs in the late afternoon and ads for a financial services firm are receiving more click-throughs early in the morning, then the placement of those particular ads can be modified in order to maximize the number of click-throughs for the advertisers. The present invention provides statistics on each derivative advertisement link, each URL and can combine and provide cumulative statistics. The statistics provided preferably comprise at least the number of hits per image per online newspaper website and the number of click-throughs per image per newspaper website.

This section of MASON et al. discloses, "[f]or example, if it is found that a soup advertisement is receiving more click-throughs in the late afternoon and ads for a financial services firm are receiving more click-throughs early in the morning, then the placement of those particular ads can be modified in order to maximize the number of click-throughs for the advertisers."

Applicants respectfully submit that comparing click-throughs of one advertisement to click-throughs of another advertisement, as disclosed by MASON et al., is a different concept from identifying a second proportion of a quantity of clicks on an advertising link by identified non-malicious users to a total quantity of clicks on the (same) advertising link by the group of users. Moreover, this section of MASON et al. does not even disclose or suggest identified non-malicious users. Further still, this section of MASON et al. does not disclose or suggest a proportion of any identified type of user to any group of users at all. Therefore, this section of MASON et al. fails to

disclose or suggest at least this feature of claim 1.

Since the cited references do not disclose or suggest identifying a second proportion of a quantity of clicks on the advertising link by identified non-malicious users to a total quantity of clicks on the advertising link by the group of users, the cited references cannot be relied upon for disclosing or suggesting comparing the identified first proportion to the identified second proportion, as also recited in claim 1. Nevertheless, the Examiner appears to rely on paragraphs 0114-0118 and Table 1 of SRINIVASAN et al.⁵ and on paragraph 0022 of MASON for allegedly disclosing this feature of claim 1 (Office Action, pp. 4-5). Applicants respectfully disagree with the Examiner's interpretation of SRINIVASAN et al. and MASON.

At paragraphs 0115-0118 (which describe Table 1, paragraph 0114 having been reproduced above), SRINIVASAN et al. discloses:

[0115] A manager for the Internet merchant estimates that 100,000 people visit the website in a day. This estimate may be made used internal data or from historical data, for example. Therefore, of the 100,000 visitors that visit the website, the dynamic sampling engine will randomly pick out 20,000 to receive each of the stock ads in this example, as there is no prior knowledge about the effectiveness of the ads.

[0116] Table 1 illustrates the results of the first iteration of an experiment conducted using the inventive system

[Table 1 not reproduced here]

[0117] In this example, every ad met the minimum threshold of 0.001, and therefore none are dropped. Ad C is determined to be the most effective ad and may now be distributed to every visitor that visits the website.

[0118] In the next iteration, the system may perform more limited sampling using this distribution data. For example, in the next iteration, the system may conduct the experiment on only 5% of the population, while Ad C is presented to the remaining population. The ads may be presented to the sample visitors according to their posterior distribution in the prior experiment, or may be uniformly distributed. The next iteration may or may not include experiments on Ad C, which is now the currently displayed ad. New click-rates are determined, and a new posterior distribution is calculated for the next iteration. In this manner, ineffective ads are not wasted on visitors through excessive experimentation.

⁵ The Examiner cites to paragraphs 0014-0018 of SRINIVASAN et al. Applicants believe that citing to paragraphs 0014-0018 was an inadvertent typographical error, as these paragraphs have nothing to do with Table 1. Applicants believe that the Examiner appears to intend to rely on paragraphs 0114-0118. Furthermore, Applicants respectfully submit that paragraphs 0014-0018 of SRINIVASAN et al. clearly do not disclose or suggest the above feature of claim 1.

This section of SRINIVASAN et al. discloses, *inter alia*, that an ad "is determined to be the most effective ad and may now be distributed to every visitor that visits the website." This section of SRINIVASAN et al., however, does not disclose or suggest comparing the identified first proportion to the identified second proportion, as recited in claim 1.

At paragraph 0022, MASON discloses:

In accordance with another preferred aspect of the present invention, a central processor or other computing device counts and records the number of times that derivative advertisement links are actually accessed from particular online accessing devices. For example, the central processor can determine the total number of times that a derivative advertisement is accessed by any online accessing devices or the number of times that such ads are accessed from different online accessing devices. In this manner, the monitoring and auditing integrity is maintained in order to give the advertiser a true representation of the success of the campaign and to discourage potential fraudulent practices wherein a particular derivative advertising link is accessed repeatedly, many times during a short time period from a single computer in order to increase the perceived number of hits or click-throughs.

This section of MASON discloses "determin[ing] the total number of times that a derivative advertisement is accessed by any online accessing devices or the number of times that such ads are accessed from different online accessing devices." This section of MASON, however, does not disclose or suggest comparing the identified first proportion to the identified second proportion, as recited in claim 1.

For at least the foregoing reasons, Applicants respectfully submit that claim 1 is patentable over SRINIVASAN et al., MESSER, and MASON et al., whether taken alone or in any reasonable combination. Claims 2 and 4-11 depend from claim 1 and are, therefore, patentable over SRINIVASAN et al., MESSER, and MASON et al. for at least the reasons provided above with respect to claim 1. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 1, 2, and 4-11 under 35 U.S.C. § 103(a) based on SRINIVASAN et al., MESSER, and MASON et al.

Moreover, these dependent claims recite additional features not disclosed or suggested by the cited references. For instance, without acquiescing in the rejection of claims 4-7 prior to the present

amendment, Applicants respectfully submit that the cited references do not disclose or suggest the features recited in any of claims 4-7, as amended. For at least these additional reasons, Applicants respectfully submit that claims 4-7 is patentable over SRINIVASAN et al., MESSER, and MASON et al., whether taken alone or in any reasonable combination.

Applicants respectfully submit that independent claims 16-19, 29, and 30 are patentable over SRINIVASAN et al., MESSER, and MASON et al., whether taken alone or in any reasonable combination, for at least reasons similar to reasons given above with respect to claim 1. Claims 20, 21, and 23-28 depend from claim 16, claims 34 and 35 depend from claim 17, claims 36 and 37 depend from claim 18, and claim 38 depends from claim 29. Therefore, these dependent claims are patentable over the cited references for at least the reasons provided above for their respective independent claims. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 16-21, 23-30, and 34-48 under 35 U.S.C. § 103(a) based on SRINIVASAN et al., MESSER, and MASON et al.

***Rejection under 35 U.S.C. § 103(a) based on
SRINIVASAN et al., MESSER, MASON et al., and ISHIKAWA***

Claims 3, 15, 22, 31, 32, and 39-46 stand rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over SRINIVASAN et al. in view of MESSER, further in view of MASON et al., and still further in view of ISHIKAWA. Applicants respectfully traverse this rejection.

Claims 3, 15, 43, and 44 depend from claim 1, claim 22 depends from claim 19, claims 32 and 46 depends from claim 16, claim 39 depends from claim 29, and claims 40 and 41 depend from claim 30.⁶ While not acquiescing in the rejection of claims 3, 15, 22, 32, and 39-46, Applicants submit that the disclosure of ISHIKAWA does not remedy the deficiencies in the disclosures of

⁶ On pages 20-22 of the Office Action, the Examiner appears to identify most of these claims as depending from claim 31. Applicants respectfully request the Examiner to consider these claims in view of their proper dependencies in any subsequent communication.

SRINIVASAN et al., MESSER, and MASON et al. set forth above with respect to claim 1. Therefore, these dependent claims are patentable over SRINIVASAN et al., MESSER, MASON et al., and ISHIKAWA, whether taken alone or in any reasonable combination, for at least the reasons given above with respect to their respective independent base claims. Accordingly, Applicants respectfully request that reconsideration and withdrawal of the rejection of claims 3, 15, 22, 32, and 39-46 under 35 U.S.C. § 103(a) based on SRINIVASAN et al., MESSER, MASON et al., and ISHIKAWA.

Moreover, these dependent claims are patentable over the cited references for reasons of their own. For example, claim 3 recites that tracking activities of the group of users visiting the web site includes determining whether the users in the group of users load images. The Examiner appears to admit that SRINIVASAN et al., MESSER, and MASON et al. do not disclose this feature, and relies on paragraph 0015 of ISHIKAWA for allegedly disclosing the above feature of claim 3 (Office Action, pp. 19-20). Applicants respectfully disagree with the Examiner's interpretation of ISHIKAWA.⁷

At paragraph 0015, ISHIKAWA discloses:

When an advertising link is loaded onto a user's computer, a confirmation code is generated. If the user chooses to access the advertised materials, for example, the web page being advertised, the user clicks on the advertising link and is transmitted to the merchant's web site. As the user is transmitted to the merchant's web page, current user information generated in accordance with standard transmission protocols and the confirmation code are also transmitted.

This section of ISHIKAWA does not relate to tracking activities of a group of users visiting a web site. ISHIKAWA's disclosure of "an advertising link [being] loaded onto a user's computer" is a completely different function with a completely different result from tracking activities of a group of

⁷ Applicants note that Applicants' previous Amendment included remarks traversing this same allegation. Applicants believe that the Examiner has not considered and substantively responded to Applicants' remarks with respect to this allegation, as is required of the Examiner. See M.P.E.P., § 707.07(f). Therefore, Applicants respectfully request that the Examiner fully consider and respond to these remarks regarding claim 3.

users visiting a web site that includes determining whether the users in the group of users load images, as recited in claim 3. Moreover, the Examiner provides no explanation as to why one skilled in the art would have construed ISHIKAWA's disclosure of "an advertising link [being] loaded onto a user's computer" as reasonably corresponding to tracking activities of a group of users visiting a web site that includes determining whether the users in the group of users load images. Thus, the Examiner has not established a *prima facie* case of obviousness with respect to claim 3.

Further with respect to claim 3, Applicants respectfully submit that Applicants have been unable to locate disclosure in any of the cited references that discloses or suggests that identifying the set of non-malicious users includes identifying users, in the group of users, that are determined as loading images, where the set of non-malicious users includes the users that are determined as loading images, as recited in claim 3, as amended.

For at least these additional reasons, Applicants submit that claim 3 is patentable over SRINIVASAN et al., MESSER, MASON et al., and ISHIKAWA, whether taken alone or in any reasonable combination. Thus, Applicants respectfully request reconsideration and withdrawal of the rejection of claim 3 under 35 U.S.C. § 103(a) based on SRINIVASAN et al., MESSER, MASON et al., and ISHIKAWA.

In addition to the remarks above regarding claims 44-46, Applicants respectfully submit that the rejection of these claims under 35 U.S.C. § 103(a) based on SRINIVASAN et al., MESSER, MASON et al., and ISHIKAWA is improper. Claims 44 and 45 depend from claim 1, and claim 46 depends from claim 16. Claims 1 and 16 were rejected under 35 U.S.C. § 103(a) based on SRINIVASAN et al., MESSER, and MASON et al. In the rejection of claims 44-46, the Examiner does not appear to cite ISHIKAWA as a reference. Therefore, since ISHIKAWA is not cited as a reference in the rejection of claims 44-46, Applicants respectfully submit that the rejection of these

claims under 35 U.S.C. § 103(a) based on SRINIVASAN et al., MESSER, MASON et al., and ISHIKAWA is improper.

Independent claim 31 recites features similar to features described above with respect to claim 1. Applicants respectfully submit that the disclosure of ISHIKAWA (which was not cited as disclosing or suggesting these similar features) does not remedy the deficiencies in the disclosures of SRINIVASAN et al., MESSER, and MASON et al. set forth above with respect to claim 1. Therefore, Applicants submit that claim 31 is patentable over SRINIVASAN et al., MESSER, MASON et al., and ISHIKAWA, whether taken alone or in any reasonable combination, for at least reasons similar to reasons given above with respect to claim 1. Claims 42 and 43 depend from claim 31 and are, therefore, patentable over the cited references for at least the reasons provided above for claim 31. Accordingly, Applicants respectfully request reconsideration and withdrawal of the rejection of claims 31, 42, and 43 under 35 U.S.C. § 103(a) based on SRINIVASAN et al., MESSER, MASON et al., and ISHIKAWA.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request the Examiner's reconsideration of this application, and the timely allowance of the pending claims. Applicants respectfully request entry of the present amendment.

If the present application is not now believed to be in condition for immediate allowance, Applicants respectfully request that the Examiner contact Applicants' representative at the contact number provided below to resolve any outstanding issues.

As Applicants' remarks with respect to the Examiner's rejections are sufficient to overcome these rejections, Applicants' silence as to assertions by the Examiner in the Office Action or certain requirements that may be applicable to such assertions (e.g., whether a reference constitutes prior art,

reasons to modify a reference and/or to combine references, assertions as to dependent claims, etc.) is not a concession by Applicants that such assertions are accurate or such requirements have been met, and Applicants reserve the right to analyze and dispute such assertions/requirements in the future.

To the extent necessary, a petition for an extension of time under 37 C.F.R. § 1.136 is hereby made. Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-1070 and please credit any excess fees to such deposit account.

Respectfully submitted,

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